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APR 18

CHARLES EMMETT DICKERSON

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1939.

No. 705.

THE UNITED STATES, PETITIONER,

v.
EMMETT F. DICKERSON.

On Writ of Certiorari to the Court of Claims.

BRIEF FOR RESPONDENT.

HERMAN J. GALLOWAY,
Attorney for Respondent.

GEORGE R. SHIELDS,
JOHN W. GASKINS,
FRED W. SHIELDS,
Of Counsel.

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IN THE

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OCTOBER TERM, 1939.

UNITED STATES OF AMERICA,

Petitioner,

v.

EMMETT F. DICKERSON.

No. 705.

On Writ of Certiorari to the Court of Claims.

BRIEF FOR RESPONDENT.

Opinion Below.

The opinion of the Court of Claims (R. 3-9) is not yet officially reported.

Jurisdiction.

The judgment of the Court of Claims was entered November 6, 1939 (R. 9). The petition for a writ of certiorari was filed February 6, 1940 (R. 9), and granted March 25, 1940 (R. 10). The jurisdiction of this Court rests upon Section 3 (b) of the Act of February 13, 1925, as amended.

The Question.

Whether Section 402 of Public Resolution 122 of June 21, 1938 (*infra*, p. 14) suspends the right to the enlistment allowance payable under Section 9 of the Act of June 10, 1922 (*infra*, p. 14) to men reenlisting in the military forces of the United States during the fiscal year ending June 30, 1939.

Statutes Involved.

The applicable portions of the statutes involved are set forth in the Appendix hereto (pp. 14-15).

The Facts.

The petitioner in its brief (pp. 2, 3) has accurately stated the facts.

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Summary of Argument.

The proviso to Section 402 of Public Resolution No. 122 is written in clear and certain language and its meaning is unmistakable. There is no doubt as to its meaning. There is no reason to resort to rules of statutory construction. In simple language that proviso prohibits the use of appropriations for the fiscal year ending June 30, 1939, for the payment of the enlistment allowance to men reenlisting in that fiscal year. It does nothing more. It does not suspend the right to the allowance. But even if resort is had to the rule of statutory construction, their application would not result in the suspension of the right to the allowance.

Argument.

The opinion of the Court of Claims is clear and convincing. It is based upon sound reasoning and logic. It is well supported by authorities. Little need be added to what the Court said in that opinion and it should be affirmed by this Court.

As pointed out by the Court of Claims in its opinion, from 1854 to 1933, enlisted men of the Army were paid the enlistment allowance in one form or another (R. 4). By the basic pay Act of June 10, 1922, Congress enacted permanent legislation creating the right to the allowance in its present form. Thereafter the allowance was paid from annual lump sum appropriations for the "Pay and so forth of the Army" (R. 5) until by Section 18 of the Act of March 3, 1933 (*infra*, p. 15), so much of the Act of June 10, 1922, as provided for the payment of the allowance was "suspended" as to reenlistments during the fiscal year ending June 30, 1934.

By separate statutes this right to the allowance was "suspended" as to reenlistments during the fiscal year ending June 30, 1935 (by Act of March 28, 1934, c. 102, 48 Stat. 509, 523); the fiscal year ending June 30, 1935 (by Act of May 14, 1935, c. 110, 49 Stat. 218, 226-227); and for the fiscal year ending June 30, 1937 (by the Act of June 23, 1936, c. 725, 49 Stat. 1827, 1837).

By the Act of May 28, 1937 (c. 277, 50 Stat. 213, 232), Congress departed from its practice of suspending the right to such allowance and provided instead that no part of any appropriation for the fiscal year ending June 30, 1938, should be available for the payment of the enlistment allowance for reenlistments during that fiscal year. By Section 402 of Public Resolution No. 122 (*infra*, pp. 14, 15), identical provisions were made applicable for the fiscal year ending June 30, 1939. No restrictions were enacted for the fiscal year ending June 30, 1940, and the allowance is now being paid under the Act of June 10, 1922, as to reenlistments, since June 30, 1939.

The Words of the Statute Are Clear and Unambiguous and No Construction is Required.

The proviso to Section 402 of Public Resolution No. 122 simply states that "no part of any appropriation contained in this or any other Act for the fiscal year ending June 30, 1939, shall be available for the payment" of any enlistment allowance as to "reenlistments made during the fiscal year ending June 30, 1939, notwithstanding the applicable provisions of Sections 9 and 10" of the Act of June 10, 1922.

For the fiscal years 1934 to 1938, Congress had each year, in positive and precise language, "suspended" the provisions of the Act of June 10, 1922, which created the right to the allowance. But in the fiscal years 1938 and 1939, Congress did not "suspend" the right. It chose other certain and unambiguous words to express what it did. These words have a clear and well-known meaning. That meaning must be followed. The courts have no right to add terms to such clear and simple words. The proviso does no more than prohibit administrative

officers from using existing appropriations for the payment of the allowance. Such limited application could not be more clearly stated than by the simple language Congress has used to express it. In these circumstances it is not the province of the courts to place thereon a meaning or construction which increases the limitation imposed by the words used in the statute. Instead it is their duty to seek the meaning of the statute from the language in which it is framed and where that language is plain to enforce it according to its terms. *Caminetti v. United States*, 242 U. S. 470, 485. Accordingly, this Court has consistently held that no construction will be resorted to where the language is plain and unambiguous. *Insurance Company v. Ritchie*, 5 Wall. 541, 545; *Boudinot (Cherokee Tobacco) v. United States*, 11 Wall. 616, 620; *United States v. Lexington Mill Co.*, 232 U. S. 399, 409-410; *Commissioner of Immigration v. Gottlieb*, 265 U. S. 310, 313.

The petitioner would have the Court place a construction on the statute here involved which would add limitations not expressed in the plain language of the statute itself. This Court has held that where a law is expressed in plain and unambiguous terms the legislature should be presumed to mean what they have plainly expressed. *United States v. Lexington Mill Co.*, 232 U. S. 399, 409-410. To impute to the legislature an intent beyond the scope of the language used is to exercise a legislative rather than a judicial function, which this Court has consistently refused to do. Where such an attempt was made it was held that the Court's province was to declare what the law was, and not, under the guise of interpretation or under the influence of what might be surmised to be the policy of the Government, to adjudge that to be law which Congress did not enact as such. *Dewey v. United States*, 178 U. S. 510, 521. So strictly has this been adhered to by the Court that an effort to include, by construction, an inadvertent omission was characterized as an "enlargement" of the statute, which transcended the judicial function of the Court. *Iselin v. United States*, 270 U. S. 245, 251, cited with approval in *Wallace v. Cullen*, 298 U. S. 229, 237. The words of a statute will not be altered in the interest of an imagined intent. *United States v. Riggs*, 203 U. S. 136, 139.

Petitioner apparently relies upon what it contends is the legislative history of the Act. The decisions by this Court preclude consideration of legislative history to disclose an intent other than that naturally derived from the clear language of the statute. *United States v. Missouri Pacific R. R. Co.*, 278 U. S. 269, 278; *Wilbur v. United States, ex rel*, 284 U. S. 231, 237; *Fairport, etc., Co. v. Meredith*, 292 U. S. 589, 594; *Keuhner v. Irving Trust Co.*, 299 U. S. 445, 449.

The legislative history of an Act as an aid to its construction is only admissible to solve doubt, and not to create it. *Wisconsin R. R. Commission v. Chicago, Etc. R. R. Co.*, 257 U. S. 563, 589.

The words of the proviso to Section 402 of Public Resolution No. 122 are simple and definite. Their meaning is clear and unambiguous. There is no room for construction. Nothing should be added to or taken from the Act to alter its clear and positive meaning. There should be no resort to the legislative history to create an imagined uncertainty where from the plain words of the statute no uncertainty exists. The Act does not suspend the right to the enlistment allowance. Congress refused to again suspend this right but imposed only a limitation upon administrative officers in the use of appropriations for the fiscal year ending June 30, 1939. The language used by Congress can not be interpreted as destroying the basic right created by the Act of June 10, 1922. The decision of the Court of Claims is sound and should be affirmed.

*Even Resorting to the Rules of Construction the
Decision of the Court of Claims Should be Affirmed.*

The petitioner contends that the proviso to Section 402 of Public Resolution No. 122 suspends the right to the enlistment allowance. As heretofore pointed out, Congress had by separate acts during each of the fiscal years ending June 30, 1934, June 30, 1935, June 30, 1936, and June 30, 1937, "suspended" so much of the Act of June 10, 1922, as provided for the payment of the enlistment allowance for reenlistments during those fiscal years. Congress used the word "suspended"

to accomplish the suspension. By separate Acts applicable to the fiscal years ending June 30, 1938, and June 30, 1939, Congress departed from the use of the word "suspended." Instead it changed to other simple and well understood words; which, given their clear and natural meaning, do not suspend the right, but merely prohibit the administrative officers of the Government from using the appropriations for those fiscal years for the payment of the allowance. It is a familiar rule of construction that such a change in language necessarily implies a change of intent. Congress changed the language, thereby departing from its prior suspension of the right to the allowance.

In *United States v. Fisher*, 2 Cr. 358 (1 Dallas, 421), which involved an interpretation of bankruptcy statutes, Marshall, C. J., said, p. 424:

"This change of language strongly implies an intent to change the object of legislation." (Italics supplied.)

In *Pirie v. Chicago Title & Trust Co.*, 182 U. S. 438, which likewise involved a bankruptcy statute, the court said, p. 448:

"When the purpose of a prior law is continued usually its words are, and an omission of the words implied an omission of the purpose. This rule we lately applied in Bardes v. First National Bank of Hawarden, 178 U. S. 524."

In *Crawford v. Burke*, 195 U. S. 176, the court said, p. 190:

"Our own view, however, is that a change in phraseology creates a presumption of a change in intent, and that Congress would not have used such different language in section 17 from that used in section 33 of the act of 1867, without thereby intending a change of meaning."

In *Brewster v. Gage*, 280 U. S. 327, a case involving the interpretation of estate tax statutes, the court said, p. 337:

"The deliberate selection of language so differing from that used in the earlier Acts indicates that a change of law was intended."

Equally important is the rule of statutory construction that the intent of Congress is to be gained from the language used in the statute, giving such language its usual and ordinary sense and meaning. *United States v. First National Bank*, 234 U. S. 245, 258; *Caminetti v. United States*, 242 U. S. 470, 485. As heretofore shown, the words of the proviso to Section 402 of Public Resolution No. 122 are clear and unambiguous. The language is simple and positive. It contains no suspension of the right to the allowance. To create a suspension, words would have to be added to the statute.

There is no express suspension in the proviso to Section 402. Neither suspensions nor repeals by implication are favored by the law. *United States v. Langston*, 118 U. S. 389, 393-394. This Court has consistently held that repeals by implication are not favored and a later statute will not be held to repeal an earlier one by implication unless such a presumption is absolutely necessary. *Cope v. Cope*, 137 U. S. 682, 686; *Ward v. Race Horse*, 163 U. S. 504, 511.

If effect can be given both statutes, the presumption is that the earlier is intended to remain in force. *United States v. Burroughs*, 289 U. S. 159. A repeal by implication will not be held to exist if there can be any other reasonable construction of the statute. *Ex parte Webb*, 225 U. S. 663, 683.

As opposed to the clear, simple and unambiguous language of the proviso to Section 402 and as opposed to all of the applicable rules of statutory construction, petitioner asserts that the legislative history of the proviso shows that Congress intended to suspend the right to the enlistment allowance for the fiscal years 1938 and 1939.

The respondent contends, First, that even if the legislative history shows (and it does not) that Congress did intend to suspend the right to the allowance, the legislative history can not override the plain, simple and unambiguous terms of the statute. Second, that the legislative history does not in fact show that Congress intended to continue the suspension of the right to the enlistment allowance.

The resort to legislative history in an effort to determine the meaning of a statute is only one of the guides to aid in its con-

struction. It has been heretofore shown that the proviso to Section 402 is clear and unambiguous and that in such case there is no reason to resort to any of the rules of construction to explain the statute. The Court will look to the clear terms of the statute itself. It should not resort to the rules of construction to create an imagined uncertainty or ambiguity that does not exist in the statute itself.

It has also been heretofore pointed out that all the other applicable rules of statutory construction point to the irresistible conclusion that Congress did not intend to suspend the right to the allowance for the fiscal years ending June 30, 1938, and June 30, 1939. These rules should override the legislative history even if we assume that such history shows that Congress did in fact intend to suspend such allowance. This Court has been very careful in resorting to the legislative history to determine the meaning of a statute. It has refused to do so where the language is clear and unambiguous. *Pennsylvania R. Co. v. International Mining Co.*, 230 U. S. 184, 198-199; *McKenzie v. Hare*, 239 U. S. 299, 307-308. When it has resorted to legislative history it has not been disposed to go beyond the reports of the committees. *Lapina v. Williams*, 232 U. S. 78, 90. Here the petitioner relies upon the remarks made by members of Congress on the floor of the Senate and the House, and upon what petitioner imagines was the strategical reason which some members of Congress may have had for refusing to use apt and clear language to effect the suspension of the right to the allowance. This is not true legislative history. This Court has often said that the remarks made by members of the House and Senate can not be used to determine the meaning of a statute. *Duplex Printing Co. v. Deering*, 254 U. S. 443, 474; *United States v. Freight Association*, 166 U. S. 290, 318. It hardly needs any argument to establish that this Court will not accept petitioner's conjecture as to the reasons of strategy that may have impelled Congress to abandon the use of the word "suspended." Such conjecture is not sufficient reason for the conclusion that Congress intended, by the use of entirely different words, to continue the suspension.

Even if we examine what was said by various members of

Congress upon this question, it does not establish that Congress intended that the rights to the allowance should be suspended.

Petitioner, at pages 10 and 11 of its brief, quotes certain statements made by Senator Byrnes. Other statements made by him are again quoted by petitioner in a note at page 15 of its brief. Petitioner failed to quote what Senator Byrnes said immediately preceding that portion quoted on page 15 of its brief. Introducing an amendment to an appropriation act, which amendment is identical to the language of the proviso to Section 402 of Public Resolution 122, Senator Byrnes said (83 Cong. Rec. 9189):

"Mr. President, the amendment offered is solely a limitation as to funds, and is not legislation. It is a limitation upon the funds appropriated in the bill and does not change existing law."

Clearly, Senator Byrnes was right when he said that the provision was only a limitation upon the availability of funds, but he was wrong in his legal conclusion that it would prevent recovery in the Court of Claims. A law is not changed by a mistaken opinion which the legislature, much less any individual legislator, may have had concerning its legal effect. *Postmaster General v. Early*, 12 Wheat. 136, 148.

The Government also quotes from remarks made by Mr. Woodrum on the floor of the House of Representatives (petitioner's brief, p. 13). These statements may express Mr. Woodrum's views upon such matters, but other members of Congress did not agree with him, as is demonstrated by the following colloquy between Mr. Bacon (who was a member of the Conference Committee considering the pending bill) and Mr. Wadsworth (83 Cong. Rec. 8556, 8567):

"Mr. Bacon. It seems to me these enlisted men have an excellent case in the Court of Claims to recover from the Government on the contract.

"Mr. Wadsworth. I am not lawyer enough to know about that, but I know in the interest of fair play this practice should be stopped. I know it is not the disposition of the Committee on Naval Affairs to bring in a bill abolishing reenlistment allow-

ances, yet year after year we find tucked away in the back of a deficiency appropriation bill a provision to the effect that no moneys appropriated in any act of Congress in this particular session shall be used to pay these men the money the law says they shall have. * * *

"Mr. Bacon. I quite agree with what the gentleman is saying, and I am convinced that the enlisted men of the Army, Navy, Marine Corps, and Coast Guard have grounds for a suit against the Government in the Court of Claims. I believe the four departments so concede and I hope the enlisted men bring that suit."

These questions were debated at various times in the House and the Senate. Some members wanted the allowance paid. Others wanted to postpone payment. The identical words used in the proviso to Section 402 of Public Resolution No. 122 were discussed under various statutes affecting each of the fiscal years ending June 30, 1938, and June 30, 1939. It is true that some members said that it continued the same situation that existed in prior years; but other members disagreed with them. Some members felt that this would prevent a suit in the Court of Claims. Other members said that under this same proviso the enlisted men could sue and recover in the Court of Claims. Can this, or any other Court, in any such situation, say that all, or even a majority, of the members of either House agreed with one side or the other upon this question? A majority may have agreed with those who said that if this proviso was passed the allowance could be recovered in the Court of Claims and therefore voted for the proviso. There is nothing to show that this was not the case. This fully demonstrates the wisdom of the rule announced by this Court that the remarks by members of Congress are not safe guides to the intent of Congress. This does not establish legislative history. As was said by this Court in *United States v. Freight Association*, 166 U. S. 290, 318,

"All that can be determined from the debates and reports is that various members had various views, and we are left to determine the meaning of this Act as we determine the meaning of other Acts, from the language used therein."

Certainly, in such circumstances, it can not be said that Congress intended that the right to the allowance was thereby "suspended" and that the men could not recover such allowance in the Court of Claims.

Petitioner suggests that Congress no doubt abandoned the use of the word "suspended" for reasons of strategy. This almost charges certain members of Congress with a deception. Congress specifically had used the word "suspended" for the four preceding years. We have no right, in the absence of something indicating such a purpose, to charge that Congress still intended to suspend the right to this allowance, but hid its true meaning in other simple and clear words, which in their ordinary and natural meaning created no suspension. To so disguise their intent would be to deceive the other members of Congress. This Court will not follow any such supposed legislative history as against the clear and unambiguous meaning of the words used and also as opposed to all of the other applicable rules of statutory construction.

The Government argues at length (brief, pp. 9 and 10, and note on p. 16) that the suspension or modification could have been made by provisions in appropriation Acts, and that Congress can legislate in such Acts. Respondent does not contend that this can not be done had Congress seen fit to do so, and had actually done so by clear language. But in this case Congress did not suspend the right to the allowance. From 1933 to 1937 by express terms Congress had "suspended" the right by inserting appropriate provisions in appropriation Acts, and the validity of such suspension has not been questioned; but in 1938 and 1939 Congress did not see fit to continue that suspension.

As a last and desperate argument, the Government suggests (brief, p. 8 and note p. 9) that the Comptroller General advises that there are approximately 100,000 similar claims for the fiscal years 1938 and 1939. While respondent does not understand how such a fact (if it is a fact) is before this Court for consideration, it is submitted that it has absolutely no bearing upon the merits of the case. Respondent fully believes that if 100,000 persons have been wronged by the Government, this Court will

quickly act to bring real relief instead of hesitating to act because of the large number affected, or the fact that it may cost the Government a substantial sum of money.

Petitioner says (brief, pp. 7, 8) that the obvious purpose of the restriction was to reduce expenditures during a period of economic crisis. In 1933, when Congress expressly "suspended" the right to payment of the enlistment allowance, it was then engaged in an economy program, and made many reductions in the salaries of Government employees, as well as in other expenditures. Before 1937 when Congress ceased to suspend the right and merely provided that the appropriations for those fiscal years should not be available for the payment of the enlistment allowance, it was not engaged in any economy program, but in those years provided for large expenditures of every kind. Long before that time it had restored every reduction in salaries which it had made in its economy program of 1933. There is no reason to presume that in 1937 and 1938 Congress was any longer engaged in any economy program. If anything, we are led to believe by the remarks of Mr. Woodrum that Congress merely wished to postpone the payment of this allowance, because to include it was not in accordance with the program of the budget for that year. 81 Congressional Record 5091.

Conclusion.

From the foregoing discussion it is apparent that the Congress did not suspend the operation of Section 9 of the Act of June 10, 1922 for the fiscal year 1939. Instead it only limited the availability of appropriations for payment of the allowance as to reenlistments made during that year.

It is well established that recovery may be had where Congress has failed to appropriate all the amount provided as compensation for an officer under the basic law, or where there was a failure to appropriate any money for pay provided for in earlier permanent legislation. *United States v. Langston*, *supra*; *United States v. Vulte*, 233 U. S. 509; *Graham v. United States*, 1 C. Cls. 380; *Geddes v. United States*, 38 C. Cls. 428; *Miller v. United States*, 86 C. Cls. 609.

Particular attention is directed to the *Geddes* case, *supra*. There the question arose whether a retired army officer, who also held employment as a clerk in the Department of Agriculture, was prohibited from receiving his retired pay as such officer, as fixed by an earlier permanent statute, by the limitation in the Act of March 3, 1885 (c. 338, 23 Stat. 353, 356), which provided.

"That no part of the money herein or hereafter appropriated for the Department of Agriculture shall be paid to any person, as additional salary or compensation, receiving at the same time other compensation as an officer or employee of the Government."

The Court of Claims held that the limitation extended only to the accounting officers of the Government, and did not affect plaintiff's right to either his retired pay or salary as a clerk of the Department of Agriculture. No appeal from the court's decision was taken by the Government.

The judgment below is correct and should be affirmed.

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APPENDIX.

Act of June 10, 1922, c. 212, 42 Stat. 625, 629-630 (U. S. C., Title 10, sec. 633; Title 37, secs. 13, 16):

SEC. 9. * * * On and after July 1, 1922, an enlistment allowance equal to \$50, multiplied by the number of years served in the enlistment period from which he has last been discharged, shall be paid to every honorably discharged enlisted man of the first three grades who reenlists within a period of three months from the date of his discharge, and an enlistment allowance of \$25, multiplied by the number of years served in the enlistment period from which he has last been discharged, shall be paid to every honorably discharged enlisted man of the other grades who reenlists within a period of three months from the date of his discharge. * * *

SEC. 10.

* * * Existing laws authorizing a reenlistment gratuity to enlisted men of the Navy and Coast Guard are hereby repealed, and an enlistment allowance equal to \$50 multiplied by the number of years served in the enlistment period from which he has last been discharged, but not to exceed \$200, shall be paid to every honorably discharged enlisted man of the first three grades who reenlists within a period of three months from the date of his discharge; and an enlistment allowance of \$25 multiplied by the number of years served in the enlistment period from which he has last been discharged, but not to exceed \$100, shall be paid to every honorably discharged enlisted man of the other grades who reenlists within a period of three months from the date of his discharge. * * *

Public Resolution No. 122, June, 21, 1938, c. 554, 52 Stat. 809, 818:

SEC. 402. For an additional amount for salaries and expenses of the Rural Electrification Administration, fiscal years 1938 and 1939, including the same objects and under the same conditions specified under this head in the Independent Offices Appropriation Act, 1939, including printing and binding, there is appropriated, out of any money in the Treasury not otherwise appropriated the sum of \$700,000: *Provided*, That no part of any appro-

priation contained in this or any other Act for the fiscal year ending June 30, 1939, shall be available for the payment of enlistment allowance to enlisted men for reenlistment within a period of three months from date of discharge as to reenlistments made during the fiscal year ending June 30, 1939, notwithstanding the applicable provisions of sections 9 and 10 of the Act entitled, "An Act to readjust the pay and allowances of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service," approved June 10, 1922 (37 U. S. C. 13, 16).¹

Act of March 3, 1933, c. 212, 47 Stat. 1489, 1519:

SEC. 18. So much of sections 9 and 10 of the Act entitled "An Act to readjust the pay and allowances of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service," approved June 10, 1922, U. S. C., title 37, secs. 13 and 16), as provides for the payment of enlistment allowance to enlisted men for reenlistment within a period of three months from date of discharge is hereby suspended as to reenlistments made during the fiscal year ending June 30, 1934.²

¹ The Act of May 28, 1937, c. 277, 50 Stat. 213, 232, contains language identical with that of the *proviso* to section 402, with the substitution of "fiscal year ending June 30, 1938" for "fiscal year ending June 30, 1939."

² This section was continued in full force and effect for the fiscal years ending June 30, 1935, June 30, 1936, and June 30, 1937, by Section 24 of the Act of March 28, 1934, c. 102, 48 Stat. 509, 523, the Act of May 14, 1935, c. 110, 49 Stat. 218, 226-7; and the Act of June 23, 1936, c. 725, 49 Stat. 1827, 1837, respectively.

SUPREME COURT OF THE UNITED STATES.

No. 705.—OCTOBER TERM, 1939.

The United States, Petitioner,

vs.

Eminett F. Dickerson.

} On Writ of Certiorari to
the Court of Claims.

[May 27, 1940.]

Mr. Justice MURPHY delivered the opinion of the Court.

The question is whether respondent, Dickerson, may recover a judgment against the United States upon a cause of action founded upon Section 9 of the Act of June 10, 1922 [c. 212, 42 Stat. 625, 629-630].

Section 9 provides that after the 1st of July, 1922, an enlistment allowance shall be paid "to every honorably discharged enlisted man . . . who reenlists within a period of three months from the date of his discharge". Respondent, who was honorably discharged upon the termination of an enlisted period ending on the 21st of July, 1938, reenlisted on the following day, the 22nd, for a period of three years, but was not paid an enlistment allowance. He thereupon brought this action in the Court of Claims. It is conceded that Section 9, if not repealed or suspended at the date of his reenlistment, would entitle him to the sum of seventy-five dollars.

The Government opposed the action before the Court of Claims on the ground that Section 402 of Public Resolution No. 122, June 21, 1938 [c. 554, 52 Stat. 809, 818-819], suspended the allowance for reenlistment during the fiscal year ending June 30, 1939. Section 402 contains a proviso, appended to an appropriation for the Rural Electrification Administration, that "no part of any appropriation contained in this or any other Act for the fiscal year ending June 30, 1939, shall be available for the payment" of any enlistment allowance for "reenlistments made during the fiscal year ending June 30, 1939, notwithstanding the applicable portions of sections 9 and 10" of the Act of June 10, 1922.

The Court of Claims entered judgment for respondent on the ground that Section 402, while it restricted the funds available for

payment of the allowance, did not suspend or repeal Section 9. Because of the importance of the issue in the administration of the revenues, we granted certiorari. March 25, 1940.

There can be no doubt that Congress could suspend or repeal the authorization contained in Section 9; and it could accomplish its purpose by an amendment to an appropriation bill, or otherwise. *United States v. Mitchell*, 109 U. S. 146, 150; *Mathews v. United States*, 123 U. S. 182; *Dunwoody v. United States*, 143 U. S. 578; *Bulknep v. United States*, 150 U. S. 588, 593; *United States v. Vulte*, 233 U. S. 509, 515. See *United States v. Langston*, 118 U. S. 389. The question remains whether it did so during the fiscal year ending on the 30th of June, 1939.

Section 9 remained in full force and effect during the eleven fiscal years ending on the 30th of June, 1923 to 1933, after which date it was suspended during the ensuing four fiscal years by a provision inserted in various appropriation acts. Section 18 of the Economy Act of March 3, 1933 [c. 212, 47 Stat. 1489, 1519] provided that "So much of sections 9 and 10 of the Act . . . approved June 10, 1922 . . . as provides for the payment of enlistment allowances to enlisted men for reenlistment within a period of three months from date of discharge is hereby suspended as to reenlistments made during the fiscal year ending June 30, 1934." This provision, which concededly suspended the authorization for the enlistment allowance, was continued in full force and effect for the fiscal years ending on the 30th of June, 1935, 1936 and 1937, by its insertion in the Economy Provisions of the Independent Office Appropriation Act for the fiscal year 1935 and in the Treasury-Post Office Appropriation Acts for the fiscal years 1936 and 1937.

The Second Deficiency Appropriation Bill of May 28, 1937 [c. 277, 50 Stat. 213, 232] also contained a provision affecting the enlistment allowance, but the form of words used was changed. That Act as passed by Congress provided that "no part of any appropriation contained in this or any other Act for the fiscal year ending June 30, 1938, shall be available for the payment of enlistment allowance to enlisted men for reenlistment within a period of three months from date of discharge as to reenlistments made during the fiscal year ending June 30, 1938, notwithstanding the applicable provisions of sections 9 and 10 of the Act" approved June 10, 1922.

1c. 102, 48 Stat. 509, 523; c. 110, 49 Stat. 218, 226-227. c. 725, 49 Stat. 1827, 1837.

The identical provision, with the exception of the dates, was appended as a proviso to Section 402 of Public Resolution 122, copied above, and was made applicable during the fiscal year ending on the 30th of June, 1939.

The provision inserted in the Second Deficiency Appropriation Bill for 1937 was introduced on the floor of the Senate as an amendment by Senator Byrnes. In response to questions concerning the amendment, the Senator stated (81 Cong. Rec. 4426):

“the language of the amendment has been carried ordinarily in the Treasury and Post Office Appropriation Bill, but was not carried in that appropriation bill this year, and is therefore proposed to be included in the bill now before us.

The effect of it is simply to carry the same limitation that has been carried for years in the appropriation bills.

Its purpose is to continue the appropriation situation that has existed for years, so that no bounty shall be paid for reenlistment in the military and other uniformed services.”

The amendment was thereupon adopted in the Senate without recorded opposition, and was sent to conference. The House managers, in reporting the amendment to the House, described it as “Continuing during the fiscal year 1938 the suspension of the reenlistment gratuity for enlisted personnel of the Army, Navy, Marine Corps, and Coast Guard.” 81 Cong. Rec. 5084. The course of the debate amply discloses that the House regarded the amendment as continuing during the fiscal year 1938 the same restriction on the enlistment allowance as the provision inserted in earlier appropriation bills.² It was then adopted by the House. 81 Cong. Rec. 5091.

The identical provision (except as to the dates), eventually appended to Section 402 of Public Resolution 122, was introduced as

² Mr. Scott, one of the chief speakers against the amendment, stated (81 Cong. Rec. 5089): “In 1933 an amendment went into the Treasury Post Office appropriation bill taking away or suspending this reenlistment bonus.

The provision was continued by inserting it in the Treasury-Post Office appropriation bill each year from 1933 until this year. It was in the Treasury-Post Office appropriation bill that was brought into the House for consideration this year. I raised a point of order against the provision on the ground it was legislation on an appropriation bill, and that it did not come under the Holman rule. The Chairman of the Committee sustained the point of order.

“The bill went to the Senate and the suspension was not placed in the bill. The second deficiency appropriation bill passed the House and went over to the

an amendment to the Second Deficiency Appropriation Bill for the fiscal year 1938 (H. R. 10851, 75th Cong., 3d Sess.), then pending in the House. 83 Cong. Rec. 8522-8569. A point of order was made against the amendment on the ground that it was legislation in an appropriation bill: Representative Woodrum, who had charge of the amendment, admitted that the point of order was good, and the Chair sustained it. 83 Cong. Rec. 8567. The amendment was then offered in the Senate, where the Presiding Officer also sustained a point of order that it was legislation in an appropriation bill. 83 Cong. Rec. 9189.

The provision was thereafter included by the conference committee as a proviso to Section 402 of H. J. Res. 679 (which later became Pub. Res. No. 122). See 83 Cong. Rec. 9512, 9677. It was passed

Senate. This amendment was placed in there. It was clearly subject to a point of order in the Senate, but the point was not made against it.

"It now comes back to the House for a separate vote as an amendment. If we vote for this amendment it means the further suspension of the reenlistment bonus to the enlisted personnel of the Army, Navy, Marine Corps, Coast and Geodetic Survey, and Coast Guard."

Mr. Woodrum, who took charge of explaining the Conference Report to the House, stated (81 Cong. Rec. 5090): "In the first place, I wish to emphasize the fact that the language in the amendment only asks to continue this legislation for the fiscal year, 1938. . . . We ask in this amendment that during the next fiscal year this reenlistment bonus be not allowed; and I may say, Mr. Speaker, this is not taking one solitary thing away from any enlisted man in the Army, Navy, or Marine Corps. He is getting exactly the pay that was promised him, and every member of the Army, Navy, and Marine Corps who enlisted during the last 3 years enlisted with the knowledge there was no reenlistment bonus going to be paid to him if he did reenlist.

" . . . they know now what they knew when they reenlisted, that the time has not yet come when the Congress can offer a bonus to people working for the Government."

3 Senator Byrnes, who offered the amendment on behalf of the Appropriations Committee, then engaged in the following colloquy with Senator Walsh (83 Cong. Rec. 9189-9190):

MR. BYRNES. . . . I will say to the Senator from Massachusetts, in the light of the ruling of the Chair, that before the Congress adjourns I shall certainly make an effort to do something to bring about a change, so that there will not be dissatisfaction among the various services. If the bounties were restored, millions of dollars would be involved.

MR. WALSH. Is not the situation that under existing law there is now an authorization of funds to be paid to those who reenlist in the Army, Navy, Marine Corps, and Public Health Service? Is not that the situation?

MR. BYRNES. There is authority to pay the bounty. It has not been paid for 6 years.

MR. WALSH. No funds are available.

MR. BYRNES. No funds are available.

MR. WALSH. The House Bill did seek to provide funds for reenlistment bounties in the Army. Of course, it would be highly discriminatory to have reenlistment bounties paid to those who reenlist in the Army, and none paid to those who reenlist in the other branches of the military service.

by the Senate without much debate¹. In the House, the debate disclosed that the amendment had the same purpose and effect as the provision inserted in the various appropriation bills for the preceding years. Representative Woodrum, in presenting the amendment to the House, described it as follows (83 Cong. Rec. 9677) :

" . . . we are providing a further inhibition for 1 year against payment of the reenlistment allowances in the military and naval services.

No reenlistment allowances have been paid for the past 5 fiscal years in any of the services, and in the absence of permanent law stopping it, the inhibition has been shuffled about in economy bills and appropriation bills at one time or another. We have not paid them for 5 years, and the latter part of this amendment now before the House is a Senate amendment which discontinues for another year the payment of the reenlistment allowances.

The opponents of the amendment, while questioning its wisdom, were in general agreement with its sponsors concerning its purpose and effect. 83 Cong. Rec. 9678-9679. The amendment was then adopted by the House. 83 Cong. Rec. 9679.

We are of opinion that Congress intended in Section 402 to suspend the enlistment allowance authorized by Section 9 during the

Mr. BYRNES. It would certainly be discriminatory, and cause great dissatisfaction among the services.

Mr. WALSH. Is the bill now in such shape that no funds are provided for reenlistment bounties for any branch of the military service?

Mr. BYRNES. That is correct.

Mr. WALSH. What the Senator sought to do was to have Congress declare as its policy that it did not intend in the future to pay such reenlistment bounties so as to prevent possible claims; is not that true?

Mr. BYRNES. Mr. President, the sole position of the Committee is that no funds being provided, we should not leave open the opportunity for numbers of persons to file claims in the Court of Claims in behalf of men who reenlist, with the result that a year from now, or 2 years from now, some men would receive the reenlistment bounty or some part of it, after the attorneys received their fees.

Mr. WALSH. I think I understand.

¹ The debate in the Senate was as follows (83 Cong. Rec. 9512) :

Mr. WALSH. Mr. President, I understand that the bill as it passed the House contained a provision for the use of funds from this appropriation for reenlistments in the Army, and no provisions were made for the use of any of the appropriation for the payment of reenlistments in the Navy, the Marine Corps, or the Coast Guard.

Mr. ADAMS. That is correct.

Mr. WALSH. The purpose of the amendment is to eliminate the provision for payment in case of reenlistments in the Army because it is discriminatory against the other services and civil forces, which formerly received reenlistment pay and allowances.

Mr. ADAMS. That is correct, and it is to open the way for statutory clearing of the whole situation.

fiscal year ending on the 30th of June, 1939. The legislative history, summarized above, discloses that Congress intended the legislation concerning the allowance during the fiscal years 1938 and 1939 as a continuation of the suspension enacted in each of the four preceding years. The adoption in the act of May 28, 1937, of different terminology might in other circumstances indicate an intent to change the object of the legislation. Compare *Brewster v. Gage*, 280 U. S. 327, 337; *Crawford v. Burke*, 195 U. S. 176, 190; *Pirie v. Chicago Title and Trust Co.*, 182 U. S. 438, 448. But the drawing of such an inference is a workable rule of construction, not an infallible guide to legislative intent, and cannot overcome more persuasive evidence where, as here, it exists. Compare *Boston Sand & Gravel Co. v. United States*, 278 U. S. 41, 48.

The respondent contends that the words of Section 402 are plain and unambiguous and that other aids to construction may not be utilized. It is sufficient answer to deny that such words when used in an appropriation bill are words of art or have a settled meaning. See *United States v. Perry*, 50 Fed. 743, 748 (C. C. A., 8th).⁵ The very legislative materials which respondent would exclude refute his assumption. It would be anomalous to close our minds to persuasive evidence of intention on the ground that reasonable men could not differ as to the meaning of the words. Legislative materials may be without probative value, or contradictory, or ambiguous; it is true, and in such cases will not be permitted to control the customary meaning of words or overcome rules of syntax or construction found by experience to be workable; they can scarcely be deemed to be incompetent or irrelevant. See *Boston Sand & Gravel Co. v. United States*, *supra*, at 48. The meaning to be ascribed to an Act of Congress can only be derived from a considered weighing of every relevant aid to construction.⁶ These lead to the conclusion that the judgment of the court below must be reversed.

Reversed.

The Chief Justice, Mr. Justice McREYNOLDS, Mr. Justice STONE, and Mr. Justice ROBERTS are of opinion that the judgment should be affirmed on the views expressed by the Court of Claims.

⁵ Compare Luce, *Legislative Problems*, 1935, pp. 421 et seq., 432.

⁶ Where the mind labours to discover the design of the legislature, it seizes every thing from which aid can be derived. *United States v. Fisher*, 2 Cranch 358, 386.

